

REMARKS

Applicants have amended claims 5, 6, 26, 27, and 29 to remove an optional component from a composition of interest. The amendment does not introduce any new matter.

Claims 1-37 will are currently pending and under examination. Reconsideration of this application, as amended, is respectfully requested in view of the following remarks.

Rejections under 35 U.S.C. § 112, first paragraph

The Examiner rejects claims 1-37 for failing to comply with the written description requirement. He asserts that there is no basis in the specification for the limitation "the caffeine is added in pure form" recited in independent claims 1 and 2.

Applicants do not agree. The instant specification describes two working examples, in each of which 1000 mg of caffeine was added to prepare the claimed compositions. Clearly, pure caffeine was weighed and then added. In other words, persons of ordinary skill in the art would recognize that, as of the filing date of this application, the inventors were in possession of a composition in which caffeine was added in pure form.

It appears to be the Examiner's position that, to satisfy the written description requirement, the specification needs to bear a literal description that caffeine is added in pure form. Applicants disagree. "The subject matter of the claim need not be described literally (i.e., using the same terms or in *haec verba*) in order for the disclosure to satisfy the description requirement." See MPEP 2163.02. Indeed, it is well established that "[a]n objective standard for determining compliance with the written description requirement is, 'does the description clearly allow persons of ordinary skill in the art to recognize that he or she invented what is claimed.'" Also see MPEP 2163.02. Thus, the recitation "the caffeine is added in pure form" in claims 1 and 2 need not be described literally in order for the disclosure to satisfy the written description requirement. Rather, it merely need to be disclosed in such a manner that persons of ordinary skill in the art would recognize that Applicants invented a composition containing caffeine that is added in pure form.

In view of the above remarks, Applicants respectfully submit that, contrary to the

Examiner's assertion, the specification indeed provides adequate support for the limitation "the caffeine is added in pure form."

Rejections under 35 U.S.C. § 112, second paragraph

The Examiner rejects claims 1-37 for indefiniteness. Referring to the limitation "wherein the caffeine is added in pure form" recited in independent claims 1 and 2, he asserts that it is not clear what is meant by this limitation or what degree of purity is required.

Applicants would like to point out that "[w]hether a claim is invalid for indefiniteness depends on whether those skilled in the art would understand the scope of the claim ..." North American Vaccine Inc. v. American Cyanamid Co., 28 USPQ2d 1333 (Fed. Cir. 1993). A person skilled in the art would readily know the meaning of "pure form" and would therefore understand the scope of claims 1-37, which call for use of caffeine "in pure form." More specifically, he would understand use of caffeine that is free or essentially free of impurities to the extent commercially practicable.

Applicants therefore submit that claims 1-37 are definite.

Rejections under 35 U.S.C. § 103(a)

The Examiner rejects claims 1-6 and 16 for obviousness relying on Anderson et al., U.S. Patent 5,846,569 (the '569 patent) and rejects claims 1-25, 28, and 30-37 for obviousness relying on Gorsek, U.S. Patent 6,649,195 (the '195 patent) and Gorsek, U.S. Patent 6,655,629 (the '629 patent), in view of Rosenberg et al., U.S. Patent 6,579,544 (the '544 patent), Husz, U.S. Patent 6,277,427 (the '427 patent), Pearson et al., U.S. Patent 6,261,589 (the '589 patent), and Xiong et al., U.S. Patent 6,299,925 (the '925 patent). Claims 1 and 2, the two independent claims, will be discussed first.

Claim 1 covers a composition containing vitamin B3, quercetin, and caffeine. Claim 2 covers a composition containing vitamin C, quercetin, and caffeine. In both compositions, caffeine in pure form are added and the ratio between quercetin and caffeine ranges from 1:75 to 3:1. The patentability of claims 1 and 2 therefore resides at least in part in use of caffeine in pure and quercetin together and the special ratio between caffeine and quercetin.

The '569 patent discloses a composition containing vitamin B3, vitamin C, quercetin, and green tea leaves. The '195 patent discloses a composition containing, among others, vitamin B3, vitamin C, quercetin, and a green tea extract. The '629 patent, like the '195 patent, also discloses a composition containing vitamin B3, vitamin C, quercetin, and a green tea extract. These three references do not disclose using caffeine in pure form to prepare the compositions described therein. Rather, green tea leaves or a green tea extract is used to prepare the compositions. It therefore follows that none of these three references teaches or suggests using both caffeine in pure form and quercetin, let alone the special ratio between quercetin and caffeine required by claims 1 and 2.

The other four cited references do not cure this deficiency. The '544 patent teaches a caffeine-free composition containing quercetin. Each of the '427 and '589 patents discloses a quercetin-free composition containing caffeine. The '925 patent describes a quercetin-free green tea extract formulation. Thus, the '544, '427, '589, and '925 patents also fail to teach or suggest using both caffeine in pure form and quercetin, let alone the special ratio between quercetin and caffeine required by claims 1 and 2.

In view of the above remarks, Applicants respectfully submit that claims 1 and 2 are not rendered obvious by the cited references, either alone or in any combination.

For the same reasons set forth above, claims 3-37, all dependent from claim 1 or 2, are also not rendered obvious by the cited references.

CONCLUSION

In view of the above remarks, Applicants submit that the rejections asserted in the Office Action have been overcome and claims 1-37, as pending, define subject matter that is novel and non-obvious over the prior art. Applicants respectfully request that all of the pending claims be allowed.

Applicant : Thomas Christian Lines et al.
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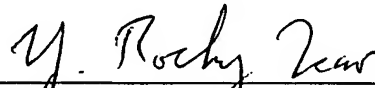
Attorney's Docket No.: 14682-005001

Enclosed is a \$225 check for the Petition for Extension of Time fee. Please apply any other charges to deposit account 06-1050, referencing Attorney's docket 14682-005001.

Respectfully submitted,

Date: _____

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